

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 98-45

In the Matter of)
)
1998 Biennial Regulatory Review:)
Streamlining of Mass Media)
Applications, Rules and)
Processes)

To: The Commission - Mail Stop 1170

COMMENTS RE PETITION FOR RECONSIDERATION

1. The Community Broadcasters Association ("CBA") hereby submits these comments in response to the Petition for Reconsideration filed on January 19, 1999, in the above-captioned proceeding by Z-Spanish Media Corporation *et al.* ("Z-Spanish").^{1/} CBA is the trade association of the nation's low power television ("LPTV") stations and represents the interests of those stations in administrative, legislative, and judicial forums.

2. Different LPTV operators have different points of view on what circumstances justify the tolling of a construction period for a broadcast facility and when the permit should expire, but there is one point on which there is virtually universal agreement: When a station has been built and is operating, its construction permit should be preserved even if the station is temporarily unable to file a license application because there has been no filing window in which an application for a major modification of construction permit may be filed. This problem is particularly acute for the LPTV industry, which faces unique application processing obstacles not imposed on radio

^{1/} These comments are timely in light of the fact that notice of the Z-Spanish Petition has not yet been published in the *Federal Register*.

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or full power television. Immediate relief is needed, including the stay of the new rules requested by Z-Spanish.

3. The specific situation where relief is required is when an LPTV station has been constructed but is operating with facilities different from those specified in the construction permit, usually under special temporary authority ("STA"). This is a much more common circumstance for LPTV stations than for stations in other services, for two reasons: First, LPTV stations are permitted to file major change applications only during designated filing windows; and second, more changes are "major" for LPTV than for radio and full power TV.

4. A fundamental premise underlying the absolute three-year limit for construction permits is that three years is enough time to deal with both normal construction activities and unforeseen contingencies, including loss of a transmitter site or other circumstances that require a modification of construction permit before a facility may be placed in service. Almost any modification that a radio or full power TV station requires, including a change in power, height, or transmitter site, is a "minor" change for which an application may be filed at any time and takes only a few months for the Commission to process. In contrast, in LPTV, any extension of a station's protected service contour in any direction, even if overall coverage is reduced, is a "major" change; and major change applications may be filed only during specified windows. There has been no LPTV major change filing window since May of 1996. Thus, for example, for a construction permit for a new LPTV station granted in June of 1996, the absolute three-year limit will expire in June of 1999, only a little over two months from now; but the permittee will have had no opportunity at any time to change transmitter site or to modify its permit except by reducing coverage to keep its protected contour within the old limit in every direction.

5. Rather than face coverage reductions, many LPTV permittees have applied for STAs to operate with the facilities they would request in a major change filing window if a window were opened.^{2/} STAs have been granted where merited; and stations have been built and are operating under them, providing a full range of programming services to the public. Because the stations are operating with facilities different from those in their permit, however, they are unable to file a license application to cover; and under the new Section 73.3598, the three-year clock relentlessly ticks away.

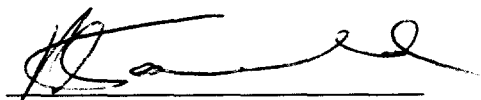
6. Substantial funds have been invested in these stations, usually hard-earned personal savings of their owners, which they have had to use in light of the difficulties that LPTV stations have raising outside funds from conventional capital sources because their use of spectrum is secondary. There is no justification for shutting down a station that has been constructed in good faith and is providing programming service to the public just because the station is operating under an STA rather than program test authority ("PTA") and is barred from self-help because there has been no filing window in which to seek a modification of construction permit.

7. CBA does not support spectrum warehousing and does not oppose strict requirements to encourage prompt construction of stations. However, it is grossly unfair, and it needlessly deprives the public of service, if a constructed and operating station is shut down because a time clock has expired through no fault of the station operator. Accordingly, CBA urges the Commission to grant at least that part of Z-Spanish's Petition for Reconsideration to the extent that the three-year construction period in Section 73.3598 should be tolled effective upon

^{2/} Sometimes, it is necessary to request something less than would be sought in a major change window in order to obtain an STA.

commencement of operation under an STA, and ending upon the grant of a construction requested in the next subsequent filing window.^{3/}

Respectfully submitted,



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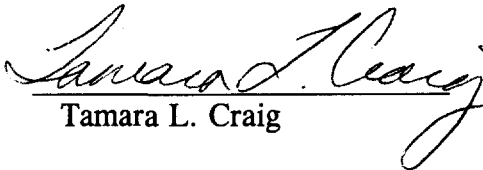
Counsel for the Community
Broadcasters Association

^{3/} While it would be possible to address LPTV STA situations by individual waiver, CBA believes that there are enough stations in this position that case-by-case consideration would be burdensome to both the stations and the Commission and that relief by rule is more appropriate.

CERTIFICATE OF SERVICE

I, Tamara L. Craig, do hereby certify that I have, this 29th day of March, 1999, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Comments on Petition for Reconsideration" to the following:

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